IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN INSOLVENCY

NOTICE OF MOTION NO.5 OF 2006
IN
INSOLVENCY PEITION NO.93 OF 2003

M/s.Blaze Bearing (India) Pvt.Ltd. ...Petitioning Creditor

Versus

Mahendra Kapoor & Ors. ...Debtors.

And

M/s.Blaze Bearing (India) Pvt.Ltd. ...Applicant
(Ori. Petitioning Creditor)

V/s.

Sanjiv Mahendra Kapoor. ...Respondent
(Orig.Debtor No.2)

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Mr. M. S. Udeshi for the Petitioning Creditor.
Mr.J. Narulla for Debtor Nos.1 and 2.
Ms. K.A. Shah i/b.Mr.A. G. Shah for Debtor Nos.3 and 4.
Mr. Y.C. Parikh, Official Assignee.

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CORAM : DR. D.Y. CHANDRACHUD, J.

November 7, 2006.

P.C.:

This Motion has been instituted with a view to invoke the jurisdiction of the Court under Section 340 read with Section 195 of the Code of Criminal Procedure, 1973. The motion has been taken out in an Insolvency Petition which has been dismissed by an order passed today.

The contention of the applicant is that in the reply that

was filed by Debtor Nos.1 and 2 to the Insolvency Petition, the defence taken was that since 2001 their relations with Debtor Nos.3 and 4 were strained. The veracity of this statement is sought to be controverted on the basis of three circumstances; the first being that the reply to the demand notice sent by the Petitioning Creditor on 1st July 2003 was sent jointly on behalf of all the Debtors on 7th July 2003; the second being that the recovery proceedings that were initiated by the Abhyudaya Co-operative Bank Ltd. were contested jointly on behalf all the Debtors; and the third that a joint petition had been filed by all the Debtors when proceedings were initiated by the Bank under the Securitization Act. Neither of these three circumstances can establish, even prima facie, that the statement that has been made on behalf of Debtor Nos.1 and 2 is false. In any event, no case has been made out for the exercise of the powers under Section 340 read with Section 195 of the Code of Criminal Procedure, 1973. The Motion is accordingly dismissed.

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